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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOCKETED

DEC - 9 2003

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

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IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING CROSSING OF THE ARIZONA
EASTERN RAILWAY COMPANY AT STATE
ROUTE 170, SAN CARLOS HIGHWAY, JCT. US
70, IN GRAHAM COUNTY, ARIZONA, M.P.
1200.79.

DOCKET NO. RR-02634A-03-0606

DECISION NO. 66610OPINION AND ORDER

DATE OF HEARING:

November 6, 2003

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Mr. Timothy Sabo, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

On August 26, 2003, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") a request for approval for the Arizona Eastern Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's existing track at State Route 170, San Carlos Highway, at the junction with U.S. 70, Graham County, Arizona at M.P. 1200.79 ("Application").

On September 10, 2003, by Procedural Order, the Application was set for hearing on October 9, 2003 and ADOT was ordered to provide interested parties with a copy of the application and the Procedural Order.

On October 9, 2003, at the outset of the hearing, counsel for the Commission's Railroad Safety Section ("Safety") disclosed that notice had not been provided by ADOT pursuant to the Procedural Order. Counsel moved for the proceeding to be continued and rescheduled for hearing after proper notice is given of the proceeding as ordered in the Procedural Order. By subsequent

1 Procedural Order, Safety's motion was granted and the hearing was continued to November 6, 2003.

2 On October 23, 2003, ADOT filed certification that notice of the proceeding had been given
3 in accordance with the Procedural Order.

4 On November 6, 2003, a full public hearing was held before a duly authorized Administrative
5 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
6 the matter was taken under advisement pending submission of a Recommended Opinion and Order to
7 the Commission.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. On August 26, 2003, ADOT filed an Application in which it requested an Opinion and
13 Order from the Commission to approve an upgrade of an existing crossing of the Railroad at State
14 Route 170, San Carlos Highway at the junction with U.S. 70, Graham County, Arizona at M.P.
15 1200.79.

16 2. A hearing was held as scheduled on November 6, 2003.

17 3. The Railroad provided notice to all interested parties of the Application and hearing
18 thereon as ordered in the Commission's Procedural Order. Subsequently, no objections to the
19 Application were received by the Commission.

20 4. The Application provides for the Railroad to upgrade the crossing by adding a turning
21 lane and extending the track crossing surface and moving the flashing light signals and automatic
22 gates.

23 5. Staff testified that the cost for the installation of the crossing upgrade as provided in
24 the Application is proper.

25 6. Staff has recommended that the Application be approved.

26 **CONCLUSIONS OF LAW**

27 1. The Commission has jurisdiction over the Railroad and over the subject matter of the
28 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and

1 40-337.01.

2 2. Notice of the Application was provided in accordance with the law.

3 3. Installation of the crossing upgrade is necessary for the public's convenience and
4 safety.

5 4. The Application should be approved as recommended by Staff.

6 5. After the installation of the crossing, the Railroad should maintain the crossing in
7 accordance with A.A.C. R14-5-104.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application
10 on behalf of the Arizona Eastern Railway Company is hereby approved.

11 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall complete the
12 crossing upgrade as described in the Application within fifteen months from the effective date of this
13 Decision.

14 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall notify the
15 Commission, in writing, within ten days of both the commencement and the completion of the
16 crossing upgrade, pursuant to A.A.C. R14-5-104.

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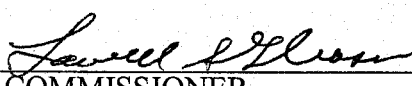
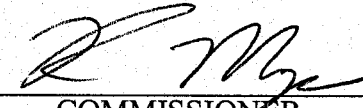
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1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Arizona
2 Eastern Railway Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6   
7 CHAIRMAN COMMISSIONER COMMISSIONER

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10 COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this 9th day of December, 2003.

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18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR:

ARIZONA EASTERN RAILWAY COMPANY

2 DOCKET NO.:

RR-02634A-03-0606

3 John Schwer
4 Assistant Manager/Railroad Liaison
5 Utility & Railroad Engineering Section
6 205 S. 17th Avenue, Mail Drop 618E
7 Phoenix, AZ 85007

8 David Gibson
9 ADOT Traffic Records Section
10 206 S. 17th Avenue, MD 064R
11 Phoenix, AZ 85007

12 Donald Tolle
13 Arizona Eastern Railway Company
14 P.O. Box Y
15 Claypool, AZ 85532-1008

16 Christopher Kempley, Chief Counsel
17 Legal Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 Don Thompson, Railroad Safety Supervisor
22 Office of Railroad Safety
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, Arizona 85007

